

Arrangements for Notary Leave in Urgent Circumstances According to the Notary Office Act

I Dewa Ayu Listari UTAMI¹, I Made Pria DHARSANA², I Nyoman SUKANDIA³

^{1,2,3}Magister Notary Study Program, Postgraduate Program, Warmadewa University
Denpasar Indonesia

Article Info:

Article History:

Received: 2022-12-05

Revised: 2023-01-15

Accepted: 2023-01-25

Keywords:

Notary, Urgent Leave, Legal Consequences.

Corresponding Author:

I Dewa Ayu Listari UTAMI

E-mail:

idalu111188@gmail.com

Abstract:

Purpose - What is the mechanism for arranging the Notary's leave by the Notary's family in an urgent situation? 2. What are the legal consequences of a Notary's leave in an urgent situation on the performance of the position of a Notary based on the Notary Office Law?

Methodology – The method chosen for this research is Notary Concept, Substitute Notary Concept, Supervisory Board Concept, Urgent Concept, and Legal Consequences Concept.

Findings - The results of the study show that Article 28 of the Law on the Position of a Notary Public shows a blurring of the norms of urgent criteria and only provides a limited and brief explanation, that is, a husband/wife or a straight line from a Notary can submit a request for leave to the Supervisory Board as stated in Article 27 paragraph (2), and an urgent situation there are many thoughts of multiple interpretations giving rise to a lack of legal certainty, there is a need for more detailed guidelines or rules regarding Notary leave in urgent circumstances so that it can be carried out following the policy of the Notary Supervisory Board.

Implication - The government needs to pay attention to the causes and effects that occur in the regulations that apply at this time so that requests for leave can be implemented in urgent situations so that legal institutions can carry out their duties according to existing law.

Cite this article as UTAMI, I. D. A. L., DHARSANA, I. M. P., SUKANDIA, I. N. (2023). "Arrangements for Notary Leave in Urgent Circumstances According to the Notary Office Act" Vol (1) Issue (1), 67 – 71.



INTRODUCTION

The Republic of Indonesia is a constitutional state guided by Pancasila and the 1945 Constitution of the Republic of Indonesia, ensuring that there is a definite, orderly situation and that there are laws that provide for the whole community. Being part of a citizen who lives in a rule-of-law country is something that should be obedient and obedient to existing legal norms. In short, the purpose of forming a law is to protect a human interest.

Law without legal awareness is useless, no matter how well it is designed; if there is no legal awareness in society, it is not very meaningful. A sense of awareness of the law is needed by every citizen, starting from an early age to adulthood. It is intended to form order, peace, justice, and peace that can be achieved by every citizen and in the social environment between citizens.

With the increasing complexity of social life to achieve its interests, it is not uncommon to achieve, require or go through stages/processes/mechanisms related to law, for example, making agreements and handling problems due to violations. The existence of a process that must go through a legal mechanism raises service providers who help facilitate all matters related to the legal stages/processes, which are referred to as legal consultants, including lawyers and notaries.

Mr. A. Pitlo: "Whoever wants to do a private deed takes a pen, who wants to get an authentic deed takes a notary" (Kohar, 1983). The role of a legal consultant, one of which is a notary, is also expected to increase legal awareness in the community. The high awareness of the law in an area gives birth to a civilized society. Building a sense of awareness of the law sometimes takes time to complete the handling by law enforcement officials of a violation. Prevention is urgently needed, and with the preparation of a systematic agreement or authentic deed, it is hoped that it will build a sense of awareness of the law for someone related to the deed drawn up.

In Article 1 of Law Number 2 of 2014 concerning the Office of a Notary (from now on referred to as the law on the Position of a Notary), a Notary is a public official whose job is to prepare authentic deeds and has other

powers as stipulated in this rule or based on other regulations. When carrying out their obligations, a Notary is required to prioritize the needs of all people, in other words, provide services and adequately maintain the public's trust that has been given. In order to carry out their obligations properly as someone who serves the community, a Notary must comply with all guidelines that have grown and are believed in by the community and must also carry out their work in a balanced manner between their abilities or knowledge with a sense of obedience to the professional code of ethics, namely the Notary's code of ethics. In addition, when carrying out their obligations and profession, a Notary must comply with the rules written in the law on the Position of a Notary.

However, it cannot be denied that behind the honorable duties of a Notary, a Notary is a human being who also has direct and indirect limitations when performing legal services to the community. These limitations include the need for a Notary as an ordinary human being to carry out activities outside of Notary affairs. A Notary is also very likely to experience unexpected things, for example, experiencing illness or in an emergency. While carrying out his position, the Notary is given the right to leave.

While carrying out his profession, a Notary is given the right to leave, which can be used if he has carried out his position for 2 (two) years. A Notary's maximum number of leave entitlements is 12 (twelve) years. It is the same as the personality of the Notary's position, which must be aligned when the Notary is still in his term of office, so the Notary involved must determine a replacement Notary (Adjie, 2008). The right to leave is also stated in the Notary Office Act in Article 25 paragraph (2), which states that the right to leave for a Notary can be used when a Notary has held his position for 2 (two) years.

In addition to the Notary Office Law, there are also legal regulations issued in 2019 by the Ministry of Law and Human Rights with number 19 regarding requirements and procedures for appointment, leave, transfer, dismissal, and extending the term of office of a notary (from now on referred to as Permenkumham 19/2019) as norms governing the procedures for applying for Notary leave. The Notary can use the right of leave by submitting an application and having fulfilled the requirements that have been required. Guided by Article 21 in Permenkumham 19/2019, a Notary can submit a request for leave with the conditions (a) having carried out his position within two years; (b) the maximum total number of leave periods not fulfilled for a maximum of 12 years has not been fulfilled; and (c) choose a Substitute Notary.

Furthermore, Article 28 of the Notary Office Law states that in an unexpected situation, a married couple or a straight line from a Notary can submit a leave application to the Supervisory Board as stated in Article 27 paragraph (2), the definition of an urgent situation is that if the Notary cannot submit the application leave due to unforeseen circumstances.

So that the problems in Article 28 of the Notary Office Law are related to requests for leave in urgent situations, whether the meaning of an unpredictable situation is only the situation of a Notary who is sick or due to temporary absence, for example, serving as a legislator, carrying out the Hajj or Umrah pilgrimage, or specifically in Bali with many traditional ceremonies, because this article does not mention specific conditions, so a limit is needed for a notary when applying for leave in an urgent situation.

When examining from article to article related to leave in the Notary Office Law, some articles must be looked at carefully because Article 28 does not explain in detail regarding requests for leave, so it is necessary to limit the extent to which these rules can be applied. When an urgent situation arises, the existing legal norms are often unable to predict. It requires a set of legal norms to regulate this urgent situation so that legal certainty can occur.

METHODS

Writing in this scientific journal utilizes normative research methods, namely legal research that brings together normative legal aspects, which are then complemented by data collection or empirical aspects. This research is analytical descriptive research, which describes the problems related to the absence of rules regarding the urgent criteria and the legal consequences for Notaries in carrying out the position of Notary. The research process was carried out by library research, and research in the community was carried out to obtain primary data, which supported analyzing research results.

RESULT AND DISCUSSION

Fundamentally, the task of a Notary is to provide services in the form of services to people who desire to compile authentic evidence. The service should be defined in a manageable scope: compiling deeds only. Providing services must be defined concerning the overall aspects in the form of the convenience of the public receiving information, interacting with the Notary, coming to the Notary's office, and so on. So instead of that, there is a Notary's obligation to carry out legal socialization related to the preparation of the deed. Legal socialization carried out by a notary is one of the participations of a notary in the development of national law through counseling a statutory regulation in order to foster a sense of awareness of community law when obtaining justice in order to carry out rights and obligations when drafting authentic deeds (Sunday, 2020).

In one of their powers to make deeds, notaries are always required to be fair, thorough, and full of caution. It requires high focus and good physical condition. It is generally accepted that negligence and lack of focus have an impact on the level of quality of one's work. Therefore, in terms of maintaining concentration, health, and prime condition, every Notary has the right to take leave. In addition to these health factors, notaries, like other social beings, sometimes have boredom with their routines and family interests that cannot be abandoned, and also notaries, from time to time, provide education to prospective notaries and students who are apprentices.

In order to ensure that the Notary's right to leave is accorded equal weight with the provisions of Article 25 Paragraph 1 of the Notary Office Law, which governs specifically: (1) Notaries have the right to quit; (2) The right to quit as described in paragraph (1) may be exercised once a Notary has practiced his profession for two years; and (3) When taking a leave of absence, the Notary is required to name a replacement Notary.

These provisions are intended so that services to the community can continue to run. In line with the characteristics of a Notary's position, namely that it must be aligned when the Notary is in office, the related Notary must choose a replacement Notary (Adjie, 2008).

The Notary Supervisory Council is the only institution that has the authority to supervise, examine and determine penalties for Notaries; each level of the Supervisory Board consists of the Majelis Pengawas Daerah (MPD), Majelis Pengawas Wilayah (MPW) and Majelis Pengawas Pusat (MPP) has own authority (Adjie, 2011).

Article 28 of the Notary Office Law explains that when the situation is not possible, a married couple or blood relative and a notary can request leave to the Supervisory Board as stated in Article 27, paragraph (2). Furthermore, what is meant by "urgent circumstances" is if the Notary cannot apply for leave due to circumstances that are not possible.

In urgent cases, when a Notary cannot apply for leave, the role of the family is enormous; the Notary's family is given the authority to take care of leave with the assistance of the Notary's office employees.

The conditions for applying for leave when the situation is urgent are:

1. Letter of application for leave
2. Appointment letter to become a Notary Public
3. A statement from the agency concerned with the urgent situation that happened to the Notary.

A notary can submit a written request for leave accompanied by a proposal to determine a substitute notary who is the same as the requirements in the Notary Office Law and submitted to an official who has authority, namely the Supervisory Board, because the obligations of a substitute notary are the same as those of a notary, so the Notary the substitute is also obliged to take an oath/pledge of office before carrying out his position, and after all the steps mentioned above have been carried out a Substitute Notary can carry out his position in making an authentic certificate.

Based on the provisions in Article 36 of the Minister of Law and Human Rights 19/2019 states, "The Notary who submits a request for leave must provide a leave statement to the Minister by completing a blank leave report format. Based on these rules, a leave certificate is a requirement that must be included when a Notary requests leave. The leave certificate contains leave information written on the Notary's leave list book and signed by the Supervisory Board.

Before the Notary applies for leave, first apply for a leave certificate to the Directorate General of AHU Online with the following stages:

1. Open the AHU Website to the address <http://ahu.go.id/>

2. Then click the Notary login menu
3. Input the Notary account user and password
4. If you have successfully logged in, then click the leave request, then select the leave certificate
5. Complete the leave certificate application
6. Then, a list of requests for leave certificates will be displayed, and a fee must be paid in Rp. 250,000, - and waiting for validation and the validator to verify the Notary's leave application. All activities related to the Notary are paid through the Your All Payment (YAP) application on an Android smartphone; if the payment has been made, the person using it will receive a notification from YAP. Regulations related to the use of YAP were made starting December 27, 2017, and implemented in 2018.
7. After making payments and having been validated by the verifier, a sign of settlement, leave forms, and leave certificates will be seen in the list of requests for leave certificates.
8. Then the certificate can be downloaded and printed.

Notary leave refusal can only be accepted if it follows the requirements. MPD, MPW, or MPP can issue leave refusal documents with rejected backgrounds. Notary leave that is not approved can be given for reasons namely:

1. The term of office of the Notary who applies for leave has not been two years since the Notary's oath of office was taken;
2. The relevant Notary has taken leave for 12 years, or the request for leave being requested is not the same as the provisions of Article 36 paragraph (2) of the Minister of Law and Human Rights 19/2019, namely the completeness of the files that must be submitted.

Based on Article 1 paragraph (3) of the Notary Office Law, which states that a Substitute Notary is a person who at a particular time is appointed as a Notary to carry out the duties of a Notary who is on leave, sick, or temporarily unable to carry out his profession as a Notary.

Notary or Alternate Notary submits an application for the inauguration to the Head of the Regional Office of the Ministry of Law and Human Rights by bringing:

1. Appointment Letter of Application
2. Letter of Appointment of Notary / Substitute Notary
3. Minutes of the Inauguration

A substitute notary is a temporary transfer to someone to carry out the interests of the Notary. A replacement notary still has almost the same experience as the replaced Notary, so there is inevitably legality against him. As someone carrying out temporary duties, a substitute Notary will continue to exercise his authority based on the attribution that forms the basis for accepting his duties. Besides that, it is also based on the appointment by a notary directly. So that its existence is still recognized and its actions or legal actions are legal according to law.

CONCLUSION

Notary leave mechanisms are regulated in 2 (two) different regulations, namely Law Number 2 of 2014 concerning the Position of Notary and Regulation of the Minister of Law and Human Rights Number 19 of 2019 concerning Terms and Procedures for Appointment, Leave, Transfers, Termination and Term Extension Position of Notary, as well as arrangements for Notary leave by the Notary's family in urgent circumstances should be listed in article 28 of Law Number 30 of 2004 concerning the Position of Notary, in urgent circumstances here only provides a limited and brief explanation, namely, husband/wife or a straight line from Notary may apply for a leave application to the Supervisory Board as stipulated in Article 27 paragraph (2), further explaining the urgent situation here, namely when a Notary does not have the opportunity to submit a leave application due to temporary absence.

The legal consequence of a Notary's request for leave when the situation is urgent for the implementation of the Notary's position based on the Notary's Position Law, that is, if not with a Substitute Notary's proposal based on the normative application for leave, the Supervisory Board may not accept the request, so that the policy decided by the Supervisory Board which grants leave to the Notary with not to determine a replacement Notary

based on my observations is an inappropriate policy, even though there are unclear norms in the arrangements for Notary leave in urgent situations, the Supervisory Board for Notaries who are going on leave should not appoint a replacement Notary proposal as stated in Article 27 paragraph (1) of the regulations issued by the ministry of law and human rights in 2019 with number 19 regarding requirements and procedures for appointment, leave, transfer, dismissal and extension of notary term of office, which explains that the Regional Supervisory Council has the authority to appoint a substitute Notary. Based on my analysis, the suggestion or appointment of a Substitute Notary is something mandatory because if the Notary who is going on leave does not propose a Substitute Notary, the activities as a Notary will not work, so it will be detrimental to the public who use the services of a Notary.

REFERENCES

- Adjie, H. (2008). *Hukum Notaris Indonesia: Tafsir Tematik Terhadap UU No. 30 Tahun 2004 Tentang Jabatan Notaris*. Refika Aditama.
- Adjie, H. (2011). *Majelis Pengawas Notaris Sebagai Pejabat Tata Usaha Negara*. Refika Aditama, Bandung.
- Kohar, A. (1983). *Notaris Dalam Praktek Hukum*. Bandung. Penerbit Alumni.
- Sundary, R. I. (2020). *Hakekat Jabatan Notaris Dalam Negara Hukum Pancasila*. Bandung. Media Sains Indonesia.
- Widyatama, A. (2018). *Tinjauan Pengaturan Hak Cuti Notaris sebelum Menjabat Selama Dua Tahun dalam Undang-Undang Jabatan Notaris* (Doctoral dissertation, Universitas Gadjah Mada).
- Legal Documents:
- Kitab Undang-Undang Hukum Perdata, Staatsblad Tahun 1847 Nomor 23.
- Peraturan Menteri Hukum dan Hak Asasi Manusia Nomor 19 Tahun 2019 tentang Syarat dan Tata Cara Pengangkatan, Cuti, Perpindahan, Pemberhentian dan Perpanjangan Masa Jabatan Notaris.
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
- Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris. Lembaran Negara Republik Indonesia Tahun 2004 Nomor 117, Tambahan Lembaran Negara Republik Indonesia Nomor 4432.
- Undang-Undang Nomor 2 tahun 2014 tentang Perubahan atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris. Lembaran Negara Republik Indonesia Tahun 2014 Nomor 117, Tambahan Lembaran Negara Republik Indonesia Nomor 5491.